

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2012-CP-00484-COA

**CHRISTOPHER S. SOBRADO A/K/A
CHRISTOPHER STEVEN SOBRADO A/K/A
CHRIS**

APPELLANT

v.

STATE OF MISSISSIPPI

APPELLEE

DATE OF JUDGMENT:	04/09/2012
TRIAL JUDGE:	HON. PAUL S. FUNDERBURK
COURT FROM WHICH APPEALED:	PONTOTOC COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	CHRISTOPHER S. SOBRADO (PRO SE)
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: LADONNA C. HOLLAND
NATURE OF THE CASE:	CIVIL – POST-CONVICTION RELIEF
TRIAL COURT DISPOSITION:	MOTION FOR POST-CONVICTION RELIEF DISMISSED
DISPOSITION:	REVERSED AND REMANDED – 09/10/2013
REHEARING:	GRANTED; REVERSED AND REMANDED – 02/18/2014
MANDATE ISSUED:	

EN BANC.

ROBERTS, J., FOR THE COURT:

MODIFIED OPINION ON REHEARING

¶1. Acting on its own motion, this Court grants rehearing in this matter, withdraws its prior opinion, and substitutes this opinion in its place.

¶2. This case centers on a circuit court’s authority to reinstate a prisoner’s suspended sentence based on misconduct that occurred while he was still serving his initial ten-year sentence as an inmate under the supervision of the Mississippi Department of Corrections

(MDOC). Christopher Sobrado appeals the Pontotoc County Circuit Court’s judgment summarily dismissing his motion for post-conviction relief (PCR) after the circuit court ostensibly revoked his post-release supervision and reinstated the suspended portion of his sentence for burglary of a dwelling. Because the record on appeal does not clearly indicate whether the conduct that led to the circuit court’s decision occurred while Sobrado was still an inmate on earned-release supervision (ERS) or whether he had been officially discharged from his ten-year sentence and placed on post-release supervision, we reverse the circuit court’s judgment and remand this matter for an evidentiary hearing as described below.

FACTS AND PROCEDURAL HISTORY

¶3. Sobrado was indicted for two counts of burglary of a dwelling. The prosecution and Sobrado negotiated a plea agreement that the prosecution would “retire” one burglary charge in exchange for Sobrado’s guilty plea to the second burglary charge. The plea agreement was also contingent upon Sobrado’s payment of restitution to both of the burglary victims.

¶4. On April 10, 2003, Sobrado went before the circuit court and pled guilty to the second count of burglary of a dwelling.¹ The circuit court accepted Sobrado’s guilty plea and followed the prosecution’s sentencing recommendation. Specifically, the circuit court sentenced Sobrado to twenty-five years in the custody of the MDOC, with fifteen years suspended and ten years to serve, followed by five years of post-release supervision.²

¶5. Additionally, the circuit court ordered Sobrado to pay restitution to the two burglary

¹ The file before the circuit court bore the cause number CR02-144.

² The circuit court set Sobrado’s sentence to run concurrently with sentences that he had received incident to four previous convictions.

victims. To ensure that Sobrado complied with his restitution obligation, the circuit court told Sobrado, “Upon completion of your sentence, you will be placed on five years [of] post-release supervision, [and] you will be placed in a restitution center as designated by the [MDOC] until all fines, cost[s,] and restitution are paid.” In the circuit court’s subsequent sentencing order, the circuit court specified the conditions of Sobrado’s post-release supervision.³ Among other conditions, the circuit court reserved the right to revoke Sobrado’s post-release supervision if Sobrado failed to pay restitution to the victims. The circuit court further ordered that during Sobrado’s term of post-release supervision, he “shall be transported to the restitution center to successfully complete and pay all cost[s], fines, and restitution.”

¶6. On January 16, 2008, Sobrado was reclassified by the MDOC and placed on ERS.⁴ As an MDOC inmate, Sobrado was sent to the Hinds County Restitution Center. In February 2008, Sobrado began working at two restaurants. Sobrado was obligated to tender his paychecks to the restitution center, but he failed to tender approximately \$2,800 of his earnings. Sobrado was later transferred to two other restitution centers, where he tendered all of his paychecks to the MDOC. Based on the record, it appears that Sobrado spent

³ We note that the circuit court specifically ordered that Sobrado was jointly and severally liable to pay one burglary victim \$7,293.37. However, the circuit court’s sentencing order did not specify that Sobrado was jointly and severally liable to pay \$1,850 to the other burglary victim.

⁴ Sobrado’s MDOC time sheet is in the record, and it indicates that his maximum discharge date was October 16, 2013. His time sheet further indicates that his earliest possible ERS release date was December 9, 2007. His tentative discharge date, assuming that he satisfactorily participated in ERS, was June 21, 2009. He earned a total of three years and 282 days of earned time as a trusty. He also earned 140 days of meritorious earned time to reduce his initial ten-year sentence.

seventeen months in various restitution centers. Through June 2009, Sobrado had deposited a total of approximately \$9,200 toward his restitution. After deducting for his room and board and his personal allowance, Sobrado's restitution account contained approximately \$4,200.

¶7. On June 19, 2009, he was fired from his job at Wendy's. Two days later, he was written up for "disobeying a direct order of a[n MDOC] staff member." On June 22, 2009, MDOC Field Officer Fannie Tonth signed a "warrant for [Sobrado's] arrest [for] violation of [his] probation." According to Officer Tonth, Sobrado "violated the terms of [his] order of probation" when he: (a) was fired from his job on June 19, 2009; (b) refused to obey an order to wake up and clean his area on June 21, 2009; and (c) when he requested to sign out of the restitution center on June 22, 2009.

¶8. According to Officer Tonth's violation-report form, the MDOC discharged Sobrado from ERS on June 21, 2009.⁵ At that time, Sobrado began his term of post-release supervision. In other words, on June 21, 2009, Sobrado appears to have been officially discharged from his initial ten-year sentence. However, the record does not contain what has been described as a "gold certificate of discharge" from the MDOC.

¶9. On July 7, 2009, the State filed a petition to revoke Sobrado's post-release supervision and impose the suspended portion of the circuit court's sentence. The next day, the circuit court conducted a hearing on the State's petition. Based on Sobrado's allegations that there were discrepancies between his earnings and his deposit account while he was on ERS, the

⁵ That date matches the date of Sobrado's tentative discharge date on his MDOC time sheet.

circuit court continued the hearing until September 11, 2009, so Joe Cotton, the MDOC director of accounting, could testify and reconcile the discrepancies. Cotton later testified that the discrepancies were related to the fact that Sobrado simply cashed some of his paychecks during 2008, and he did not tender them to the restitution center.

¶10. Ultimately, the circuit court concluded that Sobrado more likely than not violated the terms of his post-release supervision by failing to abide by the rules of the restitution center. As a result, the circuit court reinstated the fifteen-year portion of Sobrado’s suspended sentence. However, the circuit court suspended five years of that sentence and required Sobrado to serve ten more years in MDOC custody, followed by five years of post-release supervision.

¶11. In August 2011, Sobrado filed a PCR motion attacking the validity of the circuit court’s revocation of his post-release supervision incident to case number CR02-144. Among other issues, Sobrado claimed the circuit court lacked jurisdiction to revoke his post-release supervision and reinstate the previously suspended portion of his sentence. He also claimed that his post-release supervision was unlawfully revoked. Without requiring a response from the State, the circuit court “denied” Sobrado’s PCR motion.⁶ Sobrado appeals.

STANDARD OF REVIEW

¶12. “This Court will not disturb a [circuit] court’s dismissal of a [PCR motion] unless the [circuit] court’s decision was clearly erroneous.” *Wardley v. State*, 37 So. 3d 1222, 1223-24

⁶ Because the circuit court disposed of Sobrado’s PCR motion without requiring a response from the State, the circuit court’s disposition is more accurately characterized as a summary dismissal of Sobrado’s PCR motion than a denial.

¶4) (Miss. Ct. App. 2010). A circuit court “may summarily dismiss a PCR motion where ‘it plainly appears from the face of the motion, any annexed exhibits and the prior proceedings in the case that the movant is not entitled to any relief.’” *White v. State*, 59 So. 3d 633, 635 (¶4) (Miss. Ct. App. 2011) (quoting Miss. Code Ann. § 99-39-11(2) (Supp. 2010)). Questions of law receive a de novo review. *Id.*

ANALYSIS

¶13. Sobrado claims that the circuit court erred when it revoked his post-release supervision. He further argues that the circuit court had no authority to revoke his post-release supervision for conduct that occurred while he was on ERS.⁷

¶14. Based on various statutory mechanisms that may operate to reduce the time that an offender must remain incarcerated for a felony sentence, Sobrado was “released” from prison after he had served approximately four and one-half years of the circuit court’s initial ten-year sentence for burglary of a dwelling. As required by Mississippi Code Annotated section 47-5-138(6) (Supp. 2013), the MDOC placed Sobrado on ERS. Notwithstanding Sobrado’s “release” from incarceration, while he was on ERS, he “retain[ed] inmate status and

⁷ Sobrado’s appellate brief contains no authority to support his claim. Ordinarily, the failure to cite authority in support of an argument on appeal renders an issue procedurally barred. *See* M.R.A.P. 28(a)(6). However, Sobrado cited authority in the brief he filed in support of his PCR motion. Furthermore, “[w]here, as here, a prisoner is proceeding pro se, we take that fact into account and, in our discretion, credit not so well[-]pleaded allegations . . . [so] that a prisoner’s meritorious complaint may not be lost because [it was] inartfully drafted.” *Myers v. State*, 583 So. 2d 174, 176 (Miss. 1991). Based on the precise circumstances of this case and the issues presented within it, we decline to find that this issue is procedurally barred. However, we caution pro se litigants that the failure to include authority in support of an argument on appeal will likely result in our finding that such an argument is procedurally barred.

remain[ed] under” the MDOC’s jurisdiction. Miss. Code Ann. § 47-5-138(6). To remain an inmate on ERS, Sobrado was obligated to observe certain conditions set by the MDOC. *Id.*

¶15. ERS is operated exclusively by the MDOC, with no involvement by circuit courts. Violations of ERS conditions are only reported to the MDOC. *See* Miss. Code Ann. § 47-7-27(3) (Supp. 2013). MDOC “hearing officers” will then conduct revocation hearings. Miss. Code Ann. § 47-5-138(6). If a hearing officer finds that an inmate violated ERS conditions and revokes the inmate’s ERS, the inmate “shall serve the remainder of the sentence,” with credit for the time he was on ERS. Miss. Code Ann. § 47-5-138(7) (Supp. 2013). For reasons that are not apparent in the record, the MDOC took no steps to revoke Sobrado’s ERS for violating the rules and regulations of the restitution center.

¶16. Post-release supervision is significantly different than ERS. Circuit courts have the exclusive authority to sentence qualified offenders to a term of post-release supervision. *See* Miss. Code Ann. § 47-7-34(1) (Rev. 2011). Circuit courts set the conditions that an offender must follow while he is on post-release supervision. Miss. Code Ann. § 47-7-37 (Rev. 2011). Violations of those conditions are reported to the circuit court. *Id.* And the circuit court conducts revocation hearings when there are allegations that an offender on post-release supervision violated the circuit court’s conditions. *Id.* Finally, the circuit court has the sole authority to revoke an offender’s post-release supervision for violations occurring while an offender is on post-release supervision and “impose any part of the sentence [that] might have been imposed at the time of conviction.” *Id.* Suffice it to say, while Sobrado was an inmate on ERS, he could not simultaneously be on post-release supervision. *See Jones v. State*, 97 So. 3d 1254, 1258 (¶10) (Miss. Ct. App. 2012).

¶17. Officer Tonth raised three specific claims that Sobrado violated the conditions of his post-release supervision: (1) when he got fired from his job on June 19, 2009; (2) when he disobeyed an order to get up and clean his area on June 21, 2009; and (3) when he signed out of the restitution center on June 22, 2009. The circuit court could only revoke Sobrado’s post-release supervision for misconduct that occurred while he was actually on post-release supervision. *See Smith v. State*, 742 So. 2d 1146, 1148 (¶11) (Miss. 1999). “One cannot violate a condition of [post-release supervision] that does not [yet] exist.” *Id.*

¶18. As previously mentioned, Officer Tonth’s rule-violation report states that the MDOC discharged Sobrado from ERS on June 21, 2009. After his discharge, Sobrado immediately began his term of post-release supervision. Thus, the circuit court could not have revoked Sobrado’s post-release supervision for misconduct that occurred while he was on ERS. While Sobrado was on ERS, he was classified as an inmate under the exclusive jurisdiction of the MDOC. *See Miss. Code Ann. § 47-5-138(6)*. A circuit court cannot revoke a term of post-release supervision for conduct that occurred while a prisoner is an inmate in the MDOC’s legal custody. *Jones*, 97 So. 3d at 1258 (¶11). But in *Edwards v. State*, 946 So. 2d 822, 824 (¶8) (Miss. Ct. App. 2007), this Court affirmed a circuit court’s decision to revoke an inmate’s post-release supervision for conduct that occurred while the inmate was on ERS. In so doing, this Court held that “it was immaterial as to whether [a prisoner] was under [ERS] or post-release supervision at the time he violated the terms of his probation.” *Id.* (quoting *Grace v. State*, 919 So. 2d 987, 989 (¶8) (Miss. Ct. App. 2005)). To the extent that *Edwards* allows a circuit court to revoke an inmate’s post-release supervision for misconduct that occurred while the inmate was on ERS, *Edwards* is overruled.

¶19. The circuit court held that Sobrado violated the terms of his post-release supervision by “[f]ail[ing] to complete the [r]estitution [c]enter as ordered. The offender signed himself out of [the] center [because he] wish[ed] to appear back before the [c]ircuit [c]ourt.” There was testimony that Sobrado requested to sign out of the restitution center on June 21, 2009. The record does not indicate whether Sobrado had been discharged from ERS at that time. However, in the warrant for Sobrado’s arrest for violating his “probation,” Officer Tonth charged that Sobrado also requested to sign out of the restitution center on June 22, 2009. But as Sobrado noted during the revocation hearing, there was no documentary proof that Sobrado had signed out of the restitution center. During the revocation hearing, it was clear that Sobrado wanted an explanation regarding the discrepancy between the balance of his restitution account and the amount of money that he had earned while he was housed at various restitution centers. It is also clear that Sobrado did not understand the nature of his joint and several liability to pay restitution to the two burglary victims. After hearing the circuit court’s explanations, Sobrado said, “I’d just like to apologize to the [c]ourt for taking up its time.” Sobrado then asked the circuit court to give him “another opportunity to pay [restitution].”

¶20. The State argues that based on *Rodriguez v. State*, 839 So. 2d 561 (Miss. Ct. App. 2003), it was permissible for the circuit court to revoke Sobrado’s post-release supervision. Curtis Rodriguez was convicted of aggravated assault and sentenced to twelve years in the custody of the MDOC, with eleven years suspended and one year to serve, followed by five years of “supervised probation.” *Id.* at 563 (¶2). The circuit court also ordered Rodriguez to pay restitution to the victim. *Id.* While Rodriguez was on probation, the circuit court

ordered that he be sent to a restitution center. *Id.* at (¶3). Based on Rodriguez’s violation of restitution-center rules while he was on probation, the circuit court revoked his probation and reinstated the previously suspended eleven-year portion of his sentence. *Id.* at (¶5). This Court held that there was “adequate evidence to revoke [Rodriguez’s] probation.” *Id.* at 564 (¶10). But the question in Sobrado’s case is different. The issue is whether Sobrado was an inmate on ERS when the alleged violations occurred, or whether he had been discharged from his initial ten-year sentence and placed on post-release supervision with the circuit court.

¶21. With utmost respect, the dissent fails to comprehend the issue in this case. Contrary to the dissent’s claim, this opinion does not question “the validity of the failure to pay restitution as a basis for revocation of a suspended sentence.” The circuit court specifically sentenced Sobrado to twenty-five years in the custody of the MDOC, with fifteen years suspended and ten years to serve, followed by five years of post-release supervision. The circuit court set conditions that Sobrado must obey during that five-year term of post-release supervision. There is no question that the circuit court had the authority to set those conditions of post-release supervision.

¶22. Sobrado was an inmate in the custody of the MDOC until he was discharged from his ten-year initial sentence. The circuit court sentenced Sobrado on April 10, 2003. The dissent is incorrect that there was a “condition to the suspension of his sentence and of his [post-release supervision].” The dissent further states that “the original sentencing order required Sobrado to attend the restitution center to complete restitution as a term and condition prior to receiving his suspended sentence and post-release supervision.” That statement is simply

false. The circuit court suspended fifteen years of Sobrado’s sentence on the very day that he was sentenced. The circuit court did not “conditionally” suspend part of Sobrado’s sentence; the circuit court unequivocally suspended fifteen years of his sentence. If Sobrado was to violate the conditions of his post-release supervision during the five-year period that he was actually on post-release supervision, then the circuit court could revoke the entire fifteen years of Sobrado’s suspended sentence. Terminology is important. The suspended portion of Sobrado’s sentence was not “conditionally” suspended based on some not-yet-determined future event, such as successful completion of the restitution center.

¶23. The outcome-determinative issue in this case is whether the circuit court had jurisdiction to revoke Sobrado’s suspended sentence. Section 47-7-37 provides that “[a]t any time during the period of probation the court, or judge in vacation, may issue a warrant for violating any of the conditions of probation” (Emphasis added). Our statute on post-release supervision states that “[t]he period of post-release supervision shall be conducted in the same manner as a like period of supervised probation, including a requirement that the defendant shall abide by any terms and conditions as the court may establish.” Miss. Code Ann. § 47-7-34(2). “Procedures for termination and recommitment shall be conducted in the same manner as procedures for the revocation of probation and imposition of a suspended sentence.” *Id.* Stated differently, the circuit court can issue a warrant for arrest for a violation that occurs during the period of probation or post-release supervision. This is the exact principle announced by the supreme court in *Smith*, 742 So. 2d at 1148 (¶11).

¶24. In its wisdom, the Mississippi Legislature has authorized the MDOC to reclassify inmates to ERS status or the Intensive Supervision Program (ISP) – colloquially known as

“house arrest” – if they meet certain requirements. The MDOC can then release those inmates from physical custody prior to their final discharge from their term of imprisonment. During this period of time prior to their official discharge, such inmates are still within the exclusive jurisdiction of the MDOC. Some refer to such inmates as “outmates.” If they violate the conditions of ERS or ISP as set by the MDOC, then the MDOC has the sole authority to reclassify them and return them to custody status. If such an “outmate” commits a new crime while on ERS or ISP status, he certainly may be prosecuted for that new offense. However, only the MDOC can reclassify him to custody status by revoking his ERS and require that he serve out the balance of his initial sentence.

¶25. The record does not contain documentation to support the fact that Sobrado was actually discharged from ERS on June 21, 2009. It is unclear whether Sobrado was on post-release supervision at the time the alleged misconduct that led to his revocation occurred. Furthermore, due to the contents of the record before us, we cannot determine whether Sobrado signed out of the restitution center. And if he did, we cannot determine if his reasoning was based on his refusal to participate in the program, or whether he simply wanted an explanation regarding the balance of his account and the nature of his joint and several liability. It is unclear whether the rules of the restitution center provide a mechanism for Sobrado’s seemingly reasonable requests. Furthermore, it is unclear whether Sobrado had an avenue to receive the information he sought, yet chose not avail himself of it. Consequently, we reverse the judgment of the circuit court and remand this matter for an evidentiary hearing.

¶26. During that evidentiary hearing, the circuit court must determine if the MDOC had

discharged Sobrado from ERS and placed him on post-release supervision on June 21, 2009. Additionally, the circuit court must determine whether Sobrado had signed out of the restitution center. If he had, the circuit court must determine whether Sobrado's decision to sign out of the restitution center because he wanted explanations regarding his restitution account and the nature of his joint and several liability is tantamount to his refusal to abide by the terms of the restitution center. Naturally, Sobrado's misconduct that occurred before he was actually placed on post-release supervision will be irrelevant during the evidentiary hearing, because the circuit court had no authority to revoke Sobrado's post-release supervision for misconduct that occurred while he was on ERS.

¶27. As a final note, it bears mentioning that Sobrado filed a motion for immediate release with this Court. We entered an order passing that motion for consideration of the merits of this appeal. Based on our resolution of Sobrado's appeal, we find that his motion for immediate release is moot.

¶28. THE JUDGMENT OF THE PONTOTOC COUNTY CIRCUIT COURT DISMISSING THE MOTION FOR POST-CONVICTION RELIEF IS REVERSED, AND THIS CASE IS REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. ALL COSTS OF THIS APPEAL ARE ASSESSED TO PONTOTOC COUNTY.

LEE, C.J., IRVING AND GRIFFIS, P.JJ., ISHEE, MAXWELL, FAIR AND JAMES, JJ., CONCUR. BARNES, J., CONCURS IN PART AND IN THE RESULT WITHOUT SEPARATE WRITTEN OPINION. CARLTON, J., DISSENTS WITH SEPARATE WRITTEN OPINION.

CARLTON, J., DISSENTING:

¶29. I respectfully dissent from the majority's opinion. I would affirm the circuit court's decision in this case. The original sentencing order required Sobrado to attend the restitution

center to complete restitution as a term and condition prior to receiving his suspended sentence and post-release supervision (PRS). *See* Miss. Code Ann. § 47-7-34 (Rev. 2011) (defendant shall abide by the terms and conditions as the court may establish). Under Mississippi Code Annotated section 47-7-37 (Rev. 2011), the sentencing judge possessed the authority and discretion to revoke Sobrado's suspended sentence and PRS for his violation of a condition or term of his suspended sentence and PRS.⁸ The record shows Sobrado quit the restitution center by signing himself out after being told that he failed to complete his service and pay his restitution.

¶30. Sentencing judges certainly possess the statutory authority to establish the period of supervision, as well as the terms and conditions of supervision. Miss. Code Ann. §§ 47-7-34(2); 47-7-35 (Rev. 2011). Section 47-7-34(2) also provides as follows:

The period of post-release supervision shall be conducted in the same manner as a like period of supervised probation, including a requirement that the defendant shall abide by any terms and conditions as the court may establish. Failure to successfully abide by the terms and conditions shall be grounds to terminate the period of post-release supervision and to recommit the defendant to the correctional facility from which he was previously released.⁹

See also *Grace v. State*, 919 So. 2d 987, 989 (¶8) (Miss. Ct. App. 2005); *Rodriguez v. State*, 839 So. 2d 561, 564 (¶¶9-10) (Miss. Ct. App. 2003). Sobrado's violation herein extends beyond a mere violation of an administrative rule imposed by the MDOC upon defendants when incarcerated, and instead extends to an expressed condition of his suspended sentence. *See* Miss. Code Ann. §§ 47-5-801 to -807 (Rev. 2011) (MDOC administrative remedies

⁸ *See Rodriguez v. State*, 839 So. 2d 561, 564 (¶¶9-10) (Miss. Ct. App. 2003).

⁹ *See also Lott v. State*, 115 So. 3d 903, 907-08 (¶13) (Miss. Ct. App. 2013) (acknowledging court can require defendant to abide by terms and conditions of PRS).

procedures); *Siggers v. Epps*, 962 So. 2d 78, 80 (¶6) (Miss. Ct. App. 2007) (Administrative-remedies procedures apply to inmate grievances for adverse MDOC rule-violation reports.).

¶31. With respect to our standard of review of the trial court’s denial of Sobrado’s PCR motion, precedent establishes that the circuit court may summarily dismiss a PCR motion “[i]f it plainly appears from the face of the motion, any annexed exhibits[,] and the prior proceedings in the case that the movant is not entitled to any relief[.]” Miss. Code Ann. § 99-39-11(2) (Supp. 2013). “When reviewing a [trial] court’s decision to deny a [PCR motion,] this Court will not disturb the trial court’s factual findings unless they are found to be clearly erroneous.” *Presley v. State*, 48 So. 3d 526, 528 (¶10) (Miss. 2010). However, we review questions of law utilizing a de novo standard of review. *Id.*

¶32. Application of the standard of review to this case requires that we affirm the trial court’s denial of Sobrado’s PCR motion. As previously acknowledged, the sentencing trial court clearly possessed the statutory authority to establish terms and conditions for Sobrado’s receipt of his suspended sentence and PRS. The trial court also possessed the authority to require Sobrado to attend the restitution center and complete restitution as such a condition to the suspension of his sentence and PRS. In an analogous case, *Rodriguez*, 839 So. 2d at 564 (¶¶9-10), this Court recognized that the completion of service at a county restitution center constituted a valid condition of probation or suspended sentence. More specifically, this Court acknowledged that completion of services at the Hinds County Restitution Center was one of the conditions the trial court imposed as a condition of defendant Rodriguez’s suspended sentence. *Id.* at (¶9). Rodriguez, however, failed to satisfy the required restitution and was transferred from both the Hinds County Restitution Center and the Leflore County

Restitution Center.¹⁰ Upon revocation of his suspended sentence, the trial court ordered Rodriguez into the custody of the Hinds County Restitution Center, where he was to remain until he completed the service at the court-ordered restitution center. *Id.* at 563 (¶3). Upon appellate review, this Court recognized the court-ordered restitution as a valid condition of Rodriguez’s suspended sentence. *Id.* at 564 (¶¶9-10). This Court also found that the trial court possessed sufficient evidence supporting revocation of Rodriguez’s sentence, since the record reflected that Rodriguez failed to complete his service and restitution at the county restitution center. *Id.*

¶33. Similarly, in the instant case, the record contains sufficient evidence supporting the factual findings of the trial court that Sobrado failed to satisfy the terms and conditions of the original sentencing order requiring that he complete service at a restitution center to satisfy restitution.¹¹ The record further reflects that Sobrado was not denied due process in his revocation proceedings. Clearly, the record reflects that Sobrado is entitled to no relief.¹²

¹⁰ *See Riely v. State*, 562 So. 2d 1206, 1211-12 (Miss. 1990) (resident of the Attala County Restitution Center was not denied due process when he had notice of hearing, right to be heard, right to present evidence, and right to cross-examine witnesses).

¹¹ Revocation must be based upon a showing of evidence that more likely than not the defendant violated the terms and conditions of his suspended sentence or PRS. *See* Miss. Code Ann. § 47-7-37; Miss. Code Ann. § 47-7-34(2); *see also Reese v. State*, 21 So. 3d 625, 628 (¶11) (Miss. Ct. App. 2008); *Jones v. State*, 976 So. 2d 407, 413 (¶19) (Miss. Ct. App. 2008) (appropriate standard for revocation of PRS is whether the circuit court believes it was more likely than not that the defendant violated the terms and conditions of his PRS).

¹² *See Payton v. State*, 845 So. 2d 713, 719 (¶22) (Miss. Ct. App. 2003) (cert. denied), (explaining minimum due process required in revocation proceedings). In the instant case, the requirement of restitution as a condition of the suspended sentence was articulated in the original sentencing order. Hence, no issue exists as to Sobrado receiving notice of the terms and conditions required for suspension of his sentence and PRS. *See also Tunstall v. State*, 767 So. 2d 167, 169-71 (¶¶10-16) (Miss. 1999) (acknowledging the validity of express

¶34. The majority withdraws its original opinion and issues this new majority to extend the decision to overrule *Edwards v. State*, 946 So. 2d 822 (Miss. Ct. App. 2007). However, in so doing, the majority overlooks the long line of precedent that *Edwards* relied upon that recognizes the sentencing trial judge’s authority to revoke a suspended sentence for violations of the terms and conditions thereof, before expiration of the sentence.¹³ The majority lacks a proper basis to withdraw the Court’s original opinion and issue a new, revised opinion to overrule past precedent, since no error of law or fact existed and no injustice existed in the Court’s original opinion warranting such withdrawal and issuance of a new opinion.¹⁴

¶35. The majority raises a question as to the validity of the failure to pay restitution as a basis for revocation of a suspended sentence. However, restitution has long been recognized as a valid condition of probation or a suspended sentence.¹⁵ In the case of *Bradford v. State*, 832 So. 2d 1288, 1290 (¶10) (Miss. Ct. App. 2002), Judge Southwick, writing for the Court,

preconditions).

¹³ See *Riely*, 562 So. 2d at 1211-12; *Grace*, 919 So. 2d at 989 (¶8); *Rodriguez*, 839 So. 2d at 564 (¶¶9-10).

¹⁴ See *Ryan v. Schad*, 133 S. Ct. 2548, 2550-51 (2013); *Bell v. Thompson*, 545 U.S. 794, 804-07 (2005). Neither party briefed *Edwards v. State*, and no error of law or fact or injustice exists in this case. The majority fails to show that any exceptional circumstance in the court’s original opinion warranted review of this Court’s decision on its own motion. See also M.R.A.P. 41(a) (providing that the mandate of the Mississippi Court of Appeals shall issue twenty days after the latest of the following: the entry of judgment; the disposition of a timely motion for rehearing; or the dismissal of a petition for certiorari review in the Mississippi Supreme Court).

¹⁵ See also Miss. Code Ann. § 9-7-201(8)(a) (Supp. 2013) (Circuit Court Community Corrections Act allows sentencing offenders to restitution center as condition of suspended sentence or PRS); Miss. Code Ann. § 99-37-19 (Supp. 2013) (restitution centers).

relied upon *Bearden v. Georgia*, 461 U.S. 660, 668-69 (1983), when explaining that if the court finds a probationer failed to pay restitution through neglect or design or willful disobedience, then revocation of the probationer's probation does not violate the Fourteenth Amendment of the United States Constitution.¹⁶ The record herein contains evidence of Sobrado's willful refusal to complete restitution and service at the restitution center; accordingly, I submit that the record before us meets the standard articulated by Judge Southwick in *Bradford*.

¶36. Similarly, in *Edwards*, 946 So. 2d at 823 (¶4), which the majority overrules, the defendant, Edwards, pled guilty to felony DUI and was sentenced to five years, with two years to serve, in the custody of the MDOC and three years on PRS. He was released from MDOC custody on May 17, 2004, and then placed on ERS. *Id.* at 823 (¶1). On June 16, 2004, Edwards was arrested for aggravated assault and was thereafter indicted for the assault on August 10, 2004. *Id.* In that case, Edwards violated no internal rule of MDOC while incarcerated, but instead violated a term and condition of his probation, which was set forth in his original sentencing order, by committing the felony of aggravated assault while released on ERS. On review, this Court recognized the discretion and jurisdiction of the sentencing trial judge to revoke probation when the defendant violates the terms of the probation, even while on ERS. *Id.* at 823-24 (¶8). Edwards's indictment reflected a violation of the terms and conditions of his probation and suspended sentence while placed

¹⁶ For other cases wherein failure to pay restitution was included as a basis for revocation, see *Lott*, 115 So. 3d 903; and *Summerall v. State*, 2012-CP-01354-COA, 2013 WL 6231796 (Miss. Ct. App. Dec. 3, 2013).

on ERS. *Id.* Additionally, Edwards’s ERS status did not prohibit the State from prosecuting him for the aggravated assault committed while he was on ERS, nor did it prohibit revocation of his probation. An application of the majority’s logic would have prevented the State from prosecuting Edwards since he committed a crime while on ERS.

¶37. The authority and discretion of a sentencing trial judge is undermined by the assertion that the trial court is powerless to revoke probation or a suspended sentence when a defendant commits a felony and thus violates the express conditions and terms of that probation or suspension.¹⁷ In *Edwards*, Edwards was indicted for the felony of aggravated assault, which carried a maximum sentence of twenty years (even though Edwards was sentenced to serve only seven years in the custody of the MDOC, with five years of PRS). *Id.* at 823 (¶3). The sentence imposed for the DUI felony offense, however, had not yet expired. *Id.* Thus, the sentencing trial court possessed the authority to revoke Edwards’s probation for the felony he committed while on ERS. *Id.* at 824 (¶8). In other cases, this Court chose to adopt a reasonable interpretation of a trial judge’s inartfully worded sentencing order in order to determine the trial court’s intent to suspend a sentence of incarceration on the condition of successful completion of ISP.¹⁸ *See Johnson v. State*, 77

¹⁷ *See Johnson*, 77 So. 3d 1152, 1157 (¶18) (Miss. Ct. App. 2012) (This Court chose a reasonable interpretation and determined that the “intent” of the trial court’s sentencing order was to suspend eight years of the defendant’s sentence and make successful completion of ISP a condition of the defendant’s suspended sentence.).

¹⁸ *See Ivory v. State*, 999 So. 2d 420, 427 (¶17) (Miss. Ct. App. 2008). In *Ivory*, the defendant was placed on ISP, and she used cocaine during that period. *Id.* at 423 (¶4). This Court concluded that based on the discretion afforded to sentencing judges, the circuit court retained jurisdiction over Ivory to resentence her by suspending the remaining fifteen years of her sentence and placing her on PRS. *Id.* at 429 (¶27).

So. 3d 1152, 1157 (¶18) (Miss. Ct. App. 2012).¹⁹

¶38. The opinion in *Edwards* cites to *Grace*, 919 So. 2d at 989 (¶8), wherein this Court similarly found the trial court possessed jurisdiction until expiration of the entire term for which *Grace* was sentenced, “including any and all portions ordered suspended.” *Edwards*, 946 So. 2d at 824 (¶8). This Court also found that the trial court could revoke probation for a violation of the probation terms committed while the defendant was on ERS or PRS. *Grace*, 919 So. 2d at 989 (¶8). I would agree that MDOC lacks authority to revoke a sentence that was suspended by the sentencing trial court, and that the sentencing trial court lacks authority to revoke a sentence suspended by the trial court due to a violation of a mere internal MDOC rule that is not a valid specified condition or term of the suspended sentence.²⁰ However, the sentencing trial court, as in this case, certainly retains authority to revoke a suspended sentence and PRS for a violation of the conditions and terms required for such suspension as set forth in the original sentencing order.²¹ *Rodriguez*, 839 So. 2d at

¹⁹ Judge Roberts authored the Court’s opinion.

²⁰ Section 47-5-803(2) provides the procedures for inmate grievances pertaining to MDOC rule violations. *See also Siggers*, 962 So. 2d at 80 (¶6) (inmates aggrieved by adverse MDOC-rule-violation reports must pursue those grievances pursuant to the administrative review procedures); *see* Miss. Code Ann. §§ 47-5-801 to -807 (administrative procedures for inmates of MDOC to pursue administrative remedies for grievances against the State or MDOC). *See generally Rodriguez*, 839 So. 2d at 563 (¶6) (discussing jurisdiction over revocation of a suspended sentence and PRS); *Grace*, 919 So. 2d at 989 (¶8) (This Court acknowledged that the sentencing trial court retained jurisdiction over the defendant on probation for possession of a controlled substance for the entire period of the eight-year sentence, including when the defendant was on ERS or PRS, and thus the sentencing trial court possessed the authority to revoke probation when the defendant failed to report to his supervising officer.).

²¹ *Grace*, 919 So. 2d at 989 (¶8) (citing *Rodriguez*, 839 So. 2d at 563 (¶6)) (Authority to revoke probation is vested only in the courts under section 47-7-37.).

563 (¶6). This Court reasoned in *Grace* that the authority to revoke probation is vested only in the courts under section 47-7-37, and accordingly, probationers remain under the jurisdiction of the courts until the entire term for which they were sentenced has expired, including any and all portions ordered suspended. *Grace*, 919 So. 2d at 989 (¶8); *see also Tunstall v. State*, 767 So. 2d 167, 169-71 (¶¶10-16) (Miss. 1999) (acknowledging the validity of express preconditions).

¶39. Jurisprudence recognizes that sentencing trial courts may impose conditions and terms that extend beyond the minimum statutory terms and conditions. For example, *Mississippi DUI Law & Practice*, citing section 47-7-35, acknowledges:

[T]he courts referred to in [Mississippi Code Annotated] section[s] 47-7-33 [(Rev. 2011)] or 47-7-34 shall determine the terms and conditions of probation or [PRS] and may alter or modify, at any time during the period of probation or [PRS], the conditions and may include among the following or any other:

.....

- (a) Commit no offense against the laws of this or any other state . . . ;
- (b) Avoid injurious or vicious habits;
- (c) Avoid persons or places of disreputable or harmful character;
- (d) Report to the probation and parole officer as directed;
- (e) Permit the probation and parole officer to visit him at home or elsewhere;
- (f) Work faithfully at suitable employment so far as possible;
- (g) Remain within a specified area;

- (h) Pay his fine in one (1) or several sums;
- (i) Support his dependants;
- (j) Submit, as provided in [Mississippi Code Annotated] [s]ection 47-5-601 [Rev. 2011], to any type of breath, saliva[,] or urine chemical analysis test, the purpose of which is to detect the possible presence of alcohol or a substance prohibited or controlled by any law of the State of Mississippi or the United States[.]

See Victor W. Carmody, Kevin T. Stewart & Lance O. Mixon, *Mississippi DUI Law & Practice* § 21:8, at 789 (2012).

¶40. In summary, the record contains sufficient evidence to support the trial court's revocation of Sobrado's suspended sentence and PRS for a violation of the conditions and terms set forth in the original sentencing order requiring that he complete his service at the restitution center and complete the payment of restitution. The trial court possessed authority to revoke Sobrado's suspended sentence and PRS until expiration of his sentence for these violations of the terms and conditions of such suspension and PRS. As acknowledged, we will not disturb a trial court's factual findings unless they are found to be clearly erroneous, and the record reflects substantial evidence supporting the trial court's findings that Sobrado failed to complete his service at the restitution center. Moreover, the record reflects no dispute that Sobrado quit his service at the restitution center after being informed that his service was not yet complete. Sobrado signed himself out of the restitution center after being duly informed that he had not yet completed his restitution requirements, and at that time he was released from ERS. He was then placed onto PRS and ordered to appear before the sentencing trial judge for his failure to complete his service at the restitution center, as

required by the original sentencing order as a condition to the suspension of his sentence and of his PRS. The revocation hearing complied with statutory and due-process requirements, and the record reflects substantial evidence supporting the trial court's revocation decision. The trial court acted within its authority, and the trial court's findings are not erroneous.

¶41. Based on this reasoning, I dissent.